

Escrow Agreement

To Demonstrate Closure And/Or Postclosure Care

THIS AGREEMENT, made, executed and delivered this the _____ day of _____
(insert date executed)

_____, by and between
(insert the month) (insert the year)

(insert the name of the owner or operator,
the EPA identification number and address)

as the Applicant/Permittee and

(insert name and address of the escrow agent)

as Escrow Agent, and the Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management, hereinafter called the Cabinet.

WITNESSETH:

WHEREAS, the Applicant/Permittee desires to operate a hazardous waste site or facility in the Commonwealth of Kentucky; and

WHEREAS, the laws of the Commonwealth require that financial assurance be posted to insure the closure and/or postclosure care of the facility and to otherwise guarantee compliance with all applicable laws and regulations of the Commonwealth administered by the Cabinet; and

WHEREAS, the Applicant/Permittee desires to meet the financial assurance for a hazardous waste site or facility in the Commonwealth of Kentucky by executing such bond and posting surety in the sum of

_____, Dollars, \$ _____
(insert the amount being posted in words) (insert the numerical figure of the bond)

with the Cabinet to be held by the Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for the above named Applicant/Permittee; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent and the Escrow Agent is directed to purchase certificates of deposit, hereinafter the Certificates, of the

(insert name of financial institution issuing the
Certificates, and
address of financial institution)

or establish a cash account, hereinafter the Account, which are more fully described as follows:

CERTIFICATE NO.

DATE OF ISSUANCE

PRINCIPAL AMOUNT

*(insert certificate
number for each
certificate)*

*(insert date of issuance for
each certificate)*

*(insert principal amount for
each certificate)*

CASH ACCOUNT NO.

DATE OF OPENING

PRINCIPAL AMOUNT

*(insert number of the
Account)*

*(insert opening date of the
Account)*

*(insert amount in the
Account)*

AND WHEREAS, this Agreement is a supplement to the Hazardous Waste Site or Facility Bond filed by the Applicant/ Permittee with the EPA identification number(s) _____

(insert EPA identification number(s))

for a permit to operate a hazardous waste facility.

NOW THEREFORE, in consideration of the premises set forth herein, the parties mutually agree as follows:

1. The Escrow Agent acknowledges receipt of the Certificates and the Account above listed, to be safely and securely kept by it for the stated purposes of this Agreement and subject to the terms and conditions herein, and binds itself to perform completely under the terms of this Agreement and to dispose of the Certificates or Account or the proceeds therefrom only as provided herein. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of the Certificates or the Account;

2. The parties agree that the Certificates or any subsequent Certificates are and shall be made payable in favor of the Escrow Agent only. If it is an Account, it is to be established in favor of the Escrow Agent. The parties further agree that until such time as the Cabinet orders that the bond be forfeited or until such time as the bond is released, all interest accruing on the Certificates or the Account shall be disposed of in accordance with paragraphs 4, 5, and 6 of this Agreement;

3. The parties agree that the Escrow Agent is hereby authorized and directed to insure that the Certificates or the Account remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of the Certificates, issue new Certificates of face value equal to the outstanding amount of the bond. In the event of such issuance, the new Certificates shall replace the Certificates herein for all purposes and shall be subject to the conditions of this Agreement;

4. No interest shall be paid to the Applicant/Permittee on any Certificate or Account until a full release has been obtained from the Cabinet or until the bond has been forfeited and any penalty resulting from the cashing of the Certificate has been satisfied;

5. Upon the Cabinet's written notice to the Escrow Agent of the Cabinet's certification of the satisfactory completion of all or part of closure and/or postclosure activities and the release of such bond in whole or in part, the Applicant/Permittee may direct the Escrow Agent to either issue one (1) or more new Certificates in the name of the Applicant/Permittee or a cashier's check for the amount so released;

6. In the event of forfeiture of the hazardous waste site or facility bond herein and upon the Cabinet's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash the Certificates or draw from the Account and forward to the Cabinet a cashier's check in the outstanding amount of the bond, pay any penalties which result from the interest accrued thereon, and remit any remaining interest and principal to the Applicant/Permittee;

7. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Applicant/Permittee as a result of an Order of Forfeiture;

8. In the event the Escrow Agent cancels the Account or Certificate(s) of Deposit, as provided by regulation, the proceeds shall be paid to the Cabinet;

9. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant/Permittee or to see the application of any monies paid on the instruction of the Cabinet and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee or his successor, or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

10. That for value received, the Applicant/Permittee does hereby assign, transfer, and set over to the Commonwealth of Kentucky all right, title and interest which the Applicant/Permittee may have in The Certificates or The Account. The parties agree that the Certificates or the Account are being held solely for the benefit of the Commonwealth of Kentucky and that the Applicant/Permittee has relinquished all right, title and interest to the Certificates or the Account as provided hereinafter. The Applicant/Permittee may not pledge or encumber in any manner the Certificates or the Account or any renewal certificates, or the interest due thereon, so long as the same are subject to the conditions of the bond herein;

11. The Cabinet agrees that upon the satisfactory completion of all closure and/or postclosure activities pursuant to the laws of the Commonwealth by the Applicant/Permittee and upon the Cabinet's inspection and certification of the same, the Cabinet shall release the bond herein and promptly notify the Escrow Agent and the Applicant/Permittee of such release;

12. It is agreed that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of the Certificates or the Account shall first be applied to cover the Certificates or the Account;

13. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding the Certificates or the Account for the purpose of perfecting the Cabinet's security interest in those Certificates or the Account under KRS Chapter 355;

14. This agreement shall be binding upon the successors and assigns of the respective parties and;

15. Upon receipt by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of the Certificates or in the proceeds therefrom and any interest accrued therein, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

SIGNED, SEALED AND DELIVERED, the day and date first above written by the appropriately authorized officers.

APPLICANT/PERMITTEE: _____
(insert the typed name of the owner or operator)

BY: _____
(signature of the owner or operator)

TITLE: _____
(insert the typed title of the above signatory)

ESCROW AGENT: _____
(insert the typed name of the escrow agent)

BY: _____
(signature of the authorized representative of the escrow agent)

TITLE: _____
(insert the typed title of the signatory for the escrow agent)

ENERGY AND ENVIRONMENT CABINET

BY: _____
(signature of the Director of Division of Waste Management)

TITLE: Director, Division of Waste Management

DEP-6035J, effective 2/10/94

(Note: Use of this form is required by 401 KAR 34:080.)

(Note: This form must be accompanied by the Hazardous Waste Site or Facility Bond, form number DEP-6035I, in accordance with 401 KAR 34:080.)